

**CALIFORNIA COASTAL COMMISSION**

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# TU11a



**Prepared May 30, 2001**

**To:** Coastal Commissioners and Interested Parties

**From:** Peter Douglas, Executive Director  
Tami Grove, Deputy Director  
Diane Landry, Staff Counsel

**Subject: Commission Determination of Applicable Hearing and Notice Provisions (pursuant to California Code of Regulations, Title 14, Section 13569) for the issuance of two Certificates of Compliance to Albert Schoenfield for one acre and 3.2 acre parcels located at 2731 Pecho Valley Road, Los Osos by the San Luis Obispo County Board of Supervisors.** Commission determination of the applicable hearing and notice provisions for development authorized, on appeal from the decision of the Planning Director, by the San Luis Obispo County Board of Supervisors for the approval of two parcels through the issuance of two, unconditional Certificates of Compliance. The approved project creates an additional vacant parcel in an area designated as a Sensitive Resource Area in the LCP and causes one of the newly created parcels, which contains an existing single family home, to be below the minimum parcel size for the area.

## Summary

The San Luis Obispo County Local Coastal Plan (LCP ) was certified on July 8, 1987. The County assumed authority over the issuance of Coastal development Permits on March 31, 1988. After certification of a Local Coastal Program, the Coastal Commission is authorized under CCR Title 14, §13569 to resolve disputes concerning a local government's proposed processing of development proposals for purposes of Coastal Development Permit requirements (i.e., is the development categorically excluded, non-appealable, or appealable). In this case, the Planning Director's decision to approve only one Certificate of Compliance was appealed to the Board of Supervisors by the Applicant. The county staff prepared a recommendation to the Board that the Planning Directors decision should be upheld and suggested in a memo to Commission staff that if the decision was overturned, they expected the Board would grant two, Conditional Certificates of Compliance. Subsequent to the Board's action, a local resident, Janice Rohn, contended that the April 10, 2001 approval should be appealable to the Coastal Commission. She requested the county to ask for an Executive Directors Determination pursuant to CCR, Title 14, Section 13569 and Section 23.01.041 (g) (1) and (2) of Title 23 of the County Code. ( Please see Exhibit 1 )

Commission Staff had also received a copy of the request, and, in a letter dated May 7, 2001, advised the County and applicant to immediately request the determination. ( Please see Exhibit 2 ). On May 17, 2001, the County notified Commission staff that it had chosen not to



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**August 2001 Meeting**

Staff: Diane Landry Approved by:

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request a determination because “...the Schoenfield application was not an application for development, it was unnecessary for the County to make a determination under Section 13569 as to what type of development was being proposed.....” ( Please see Exhibit 3 for the full text of the County response ) The Executive Director of the Coastal Commission replied to the County the next day stating that the dispute resolution process outlined in Section 13569 was appropriate and that his determination was that the County had effectively approved two Conditional Certificates of Compliance that, under the terms of the certified LCP, were appealable to the Coastal Commission. ( Please See Exhibit 4 ) The County disputes the Executive Director’s Determination.

Under §13569, when the local jurisdiction does not agree with the Executive Director’s determination regarding the appropriate permitting status of a particular proposal, the Commission is required to hold a hearing and make the determination at the next meeting in the appropriate geographic region of the state following the Executive Director’s determination, which in this case is the June 13, 2001 meeting in Los Angeles.

## **Executive Director’s Recommendation**

The Executive Director recommends that the Commission adopt the attached findings and resolution to determine that the project authorized by the San Luis Obispo County Board of Supervisors was effectively the approval of two Conditional Certificates of Compliance and as such, constitute appealable Coastal Development Permits.

**Motion.** *I move that the Commission determine that the development authorized by San Luis Obispo County Board of Supervisors on April 10, 2001 to create two parcels through the Certificate of Compliance process constitutes Coastal Development Permits that are appealable to the Coastal Commission.*

**Staff Recommendation.** *Staff recommends a **YES** vote. Passage of this motion will require that these Coastal Development Permits are processed as appealable items. A majority of the Commissioners present is necessary to pass the motion and adopt the following resolution and findings.*

**Resolution.** *The Commission, by adoption of the attached findings, determines, pursuant to Section 13569 of Title 14 of the California Code of Regulations, that the appropriate designation for the development approved by the San Luis Obispo County Board of Supervisors on April 10, 2001 is that it constitutes appealable Coastal Development Permits.*



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## **Recommended Findings and Declarations**

The Commission finds and declares as follows:

### **1. Project History and Background**

The gently rolling 4.2 acre site is located on the seaward side of Pecho Valley Road between the first public road and the sea on the edge of the developed portion of Los Osos. It is outside the defined "Urban Services Area" and just within the "Urban Reserve " line. Most of the nearby lots are developed with single family homes and range in size from over four acres to less than one half an acre. (Please see Exhibit 5). The LCP designation for the site is suburban residential with a minimum parcel size of two and one half acres. The site is identified as a "Sensitive Resource Area" for terrestrial habitat.

The current Applicant purchased the site in 1987 and in 1989, the County approved a Coastal Development Permit for the construction of a 3500 square foot home on the westerly portion of the parcel. The Staff Report prepared for the project identified existing and potential habitat on the site coastal scrub, Morro Bay Kangaroo Rat and Morro Manzanita ). Various conditions were attached to the approval including requirements for an open space easement on a portion of the property and deed restrictions to protect habitat values and native vegetation. At the time the project was approved, it was anticipated that a Habitat Conservation Plan would be prepared in the near future. It has not been determined whether this HCP has been prepared to date. The project was not appealed to the Coastal Commission and has been constructed.

In 1995, Mr. Schoenfield applied for a land division to divide his parcel into two parcels of 1+ and 3+ acres configured exactly as the parcels recently authorized by the Board's action. The land division was denied by the County because the resulting lots did not meet the minimum parcel size for the area of two and one half acres. The Staff Report for this project included a letter from the United States Fish and Wildlife Service (USFWS ) that stated there would be adverse impacts on habitat values if the land division was approved and an additional house built on the site.

In 2000, Mr. Schoenfield applied for two Unconditional Certificates of Compliance (C00-0166). In October of 2000, County staff prepared a report on the proposal and recommended that only



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one certificate for the entire site be approved . The report stated that the Applicant was not entitled to two Unconditional Certificates of Compliance as the lots had been created illegally in 1949 and were thus not eligible to receive *Unconditional* Certificates pursuant to Map Act and County requirements. ( Please se Exhibit 6 ) On November 14, 2000, the Planning Director approved the issuance of **one**, unconditional Certificate of Compliance.

The Planning Director's decision was challenged by the Applicant and a hearing before the Board of Supervisors was set for March of 2001. A staff report recommending that the Planning Director's decision be upheld was prepared. In March, a copy of this report was sent to Commission staff with a cover memo indicating that if the Director's decision was overruled “ *Staff fully expects that if the Board overturns the Director's decision and approves two certificates then both would be conditional certificates of compliance.*” The memo also notes that the “*project is in a coastal appeal zone*”. (Please see Exhibit 7, County Staff Report., Memo and Board of Supervisor's action on the Appeal )

The Board continued the hearing on the item from the March 6 meeting to April 10. On April 10, the Board ruled that the Applicant's parcels had not been created illegally in 1949 and were therefore entitled to two, unconditional Certificates of Compliance. Since the Board had determined this was a ministerial act, no notice of their action was sent to the Commission, nonetheless, an appeal of the action was made by Janice Rohn and received at the Commission offices on April 30, 2001. Ms. Rohn was advised by Commission staff that no Notice of Final Local Action on this item had been received and an appeal period could not be initiated until such receipt. She then asked the County to request an Executive Director's Determination pursuant to CCR Title 14, Section 13569 of the Commission's regulations. Ten days later, the County indicated that such a request would not be forthcoming. In response, the Executive Director, stated that, in his opinion, the dispute resolution process outlined in Section 13569 was applicable in this case and determined that the County had effectively issued two Conditional Certificates of Compliance which were appealable to the Coastal Commission. The County disagrees with this determination and therefore the Commission must decide whether the Board's April 10 action to approve these certificates constitutes appealable development.

## 2. Authority for Determination

The authority for the Commission's determination stems from California Code of Regulations, Title 14, Section 13569 (Determination of Applicable Notice and Hearing Procedures) that states:

*The determination of whether a development is categorically excluded, non-appealable or appealable for purposes of notice, hearing and appeals procedures shall be made by the local government at the time the application for development within the coastal*



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*zone is submitted. This determination shall be made with reference to the certified Local Coastal Program, including any maps, categorical exclusions, land use designations and zoning ordinances which are adopted as part of the Local Coastal Program. Where an applicant, interested person, or a local government has a question as to the appropriate designation for the development, the following procedures shall establish whether a development is categorically excluded, non-appealable or appealable:*

- (a) The local government shall make its determination as to what type of development is being proposed (i.e. categorically excluded, appealable, non-appealable) and shall inform the applicant of the notice and hearing requirements for that particular development. The local determination may be made by any designated local government employee(s) or any local body as provided in local government procedures.*
- (b) If the determination of the local government is challenged by the applicant or an interested person, or if the local government wishes to have a Commission determination as to the appropriate designation, the local government shall notify the Commission by telephone of the dispute/question and shall request an Executive Director's opinion;*
- (c) The executive director shall, within two (2) working days of the local government request (or upon completion of a site inspection where such inspection is warranted), transmit his or her determination as to whether the development is categorically excluded, non-appealable or appealable:*
- (d) Where, after the executive director's investigation, the executive director's determination is not in accordance with the local government determination, the Commission shall hold a hearing for purposes of determining the appropriate designation for the area. The Commission shall schedule the hearing on the determination for the next Commission meeting (in the appropriate geographic region of the state) following the local government request.*

San Luis Obispo County LCP implementation plan also includes a dispute resolution process. Section 23.01.041 (g) (1) and (2) of the County Code, a portion of the certified LCP states:

*(g) **Determination of applicable notice and hearing procedures.** The determination of whether a development is categorically excluded, non appealable or appealable for purposes of notice, hearing and appeal procedures shall be made by the County at the time the application for development within the Coastal Zone is submitted. This determination shall be made with reference to the certified Local Coastal Program,*



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*including any maps, categorical exclusions, land use designations and provisions of this title which are adopted as part of the Local Coastal Program. Where an applicant. Interested person or the county has a question as to the appropriate designation for the development, the following procedures shall establish whether a development is categorically excluded, non appealable or appealable :*

- (1) The Planning Director shall make his/her determination as to what type of development is being proposed ( i.e. categorically excluded, appealable, non appealable ) and shall inform the applicant of the notice and hearing requirement for that particular development.*
- (2) If the determination of the Planning Director is challenged by the applicant or interested person, or if the county wishes to have a determination by the Coastal Commission as to the appropriate designation, the Planning Director shall notify the Coastal Commission by telephone of the dispute/question and shall request an Executive Director's opinion.*

After the certification of a LCP, the Commission is authorized to determine the appropriate status of a development proposal (i.e., categorically excluded, non-appealable, or appealable) when requested to do so. The purpose of the regulation and companion LCP provision is to provide for an administrative process for the resolution of disputes over the status of a particular project. Such a process is important when two agencies, here the County of San Luis Obispo and the Coastal Commission both have jurisdiction over a given project. The Coastal Act was set up to give certified local governments the primary permitting authority over projects proposed in the Coastal Zone but to allow the Commission oversight authority over specified projects through the appeal process. Thus, the regulations anticipated that, from time to time, there may be disagreements regarding the status of a particular project and an administrative dispute resolution process would be preferable (and quicker) than the immediate alternative of litigation. The local government may initiate the request or forward a request made by an applicant or other interested party. The first step in this process is to request a determination from the Commission's Executive Director. If the Executive Director and the local government are in disagreement over the appropriate processing status, as is the situation here, the Commission is charged with making the final determination.

In this case, the County received a request for an Executive Director's Determination on the Board approval of two Certificates of Compliance but chose not to ask for one. The applicable regulations and ordinance sections do not offer the County this option but rather state that *"the local government **shall** notify the Commission by telephone of the dispute/question and **shall** request an Executive Director's opinion. " ( CCR, Title 14, Section 13569 (b) ) and "...the Planning Director **shall** notify the Coastal Commission by telephone of the dispute/question and **shall** request an Executive Director's opinion" ( San Luis Obispo County Code, Title 23*



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Section 23.01.041 (g) (2) ). Likewise, the Executive Director is **required** to render a determination ( CCR Title 14, Section 13569 (c) ) and, in the event the local government disagrees with the opinion, " *the Commission **shall** hold a hearing for purposes of determining the appropriate designation for the area* " ( CCR, Title 14, Section 13569 (d)). It is clear from a plain reading of the regulation, that, once a request is made, participation is not optional and that if a system for dispute resolution is to be effective, the requirements for implementation of the process must be observed by both the Coastal Commission **and** the local government. The Executive Director has, therefore made a determination, the County disagrees and the matter will be heard by the Commission.

### 3. Executive Directors Determination Disputed by the County

In response to the request by Ms. Rohn and the Commission's letter asking that the request be forwarded, the County replied, on May 17, that such a request was unnecessary because the application submitted to the county was for two **unconditional** Certificates of Compliance. The County asserts that since unconditional certificates are not considered development under the definition in the LCP, the project is outside the Commission's jurisdiction and therefore no determination regarding the appeal status is needed. Furthermore, the County response noted that "*disputes over what type of development is being proposed are to be resolved at the beginning of the process when the application is submitted so that the matter can be properly noticed and processed for hearing.* "

The Commission finds that the fact that Mr. Schoenfield may have applied for unconditional certificates should not be determinative of the actual status of the proposed project. It is the County's responsibility to determine whether a particular proposal is either exempt from the Coastal Development Permit requirement, or is appealable or not appealable to the Coastal Commission. In this case, County staff, in response to the application for two certificates, determined that only **one** unconditional Certificate of Compliance could be granted to Mr. Schoenfield. Since one unconditional Certificate of Compliance for the entire 4.2 acre site had already been granted to a previous owner in 1976, prior to Coastal Commission authority over the area, the re-affirmation of a single certificate was appropriate. On November 14, 2000, the Planning Director approved the application, but for only **one** , unconditional certificate.

The Applicant appealed this discretionary decision of the Planning Director to the Board of Supervisors in November of 2000. In March, Commission staff was notified by the County that a hearing on the appeal was scheduled for March 6, 2001. The attached County Staff report recommended that the Planning Director's decision should be up held. A cover memo to Commission Staff stated that the project was in the Coastal Commission appeal area and County staff expected that if the Director's decision was overturned, two **Conditional** Certificates of Compliance would be awarded. The Commission believes this correspondence



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supports the contention that the County had determined that if two certificates were to be granted they must be conditional and would be appealable. Therefore, the County's observation suggesting disputes over the status of a particular development should be dealt with earlier in the process is, in this case, inapplicable because until the time of the Board hearing, the application was correctly identified as to its appeal status and there was no need to request a determination under Section 13569. The Commission notes that when it became apparent that the Board action differed so significantly from the recommendation, a timely request for a determination was made by a county resident. The last minute discretionary Board decision to declare that a project, that would otherwise be subject to appeal, did not constitute "development" has a tremendous adverse effect on the public and other agencies ability to participate in the regulatory process. It is precisely this kind of situation that is properly addressed by the dispute resolution provisions in Section 13569 of the Commission's regulations. If the process for administratively resolving these disputes is not followed, the only alternative remaining is time consuming and expensive litigation.

#### **4. Commission's Determination of Applicable Hearing and Notice Requirements for the Board's Action on C00-0166**

##### **Background**

Commission staff has reviewed the San Luis Obispo County Board of Supervisor's April 10, 2001 action to approve two Certificates of Compliance for two parcels of land ( one acre and 3.2 acres respectively ) on the west side of Pecho Road in Los Osos. Staff has traced the chain of title on this property and analyzed the Applicant's supporting documentation prepared by John Wallace and Associates, the current version of the Subdivision Map Act ( Government Code Section 66410 et seq. and specifically Section 66499.35 ), the 1943 version of the Map Act ( Business and Professions Code 11535), the County Staff Reports on the application for the certificates, for a denied land division (1996) and for the construction of a single family home on the site (1989), Section 21.02.020 of Title 21 of the County Code, and the "Subdivision Regulation Matrix" prepared by the County to assist in the analysis of applications for Certificates of Compliance. Based on a review of this information, the Commission finds that the Applicant was not entitled to two Certificates of Compliance and the County should have either denied the request or approved two Conditional Certificates if conditions could bring the proposed parcels into conformity with the requirements of the LCP.

**Subdivision Map Act and Coastal Act / LCP Requirements:** The Subdivision Map Act provides for the approval of Certificates of Compliance and Conditional Certificates of Compliance ( Gov't. Code Section 66499.35 ) Certificates of Compliance are granted to confirm



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the legality of an existing parcel that was created consistent with the rules for land divisions in effect at the time the parcel was created. A Conditional Certificate of Compliance is granted to legalize a parcel that was *not* created pursuant to the rules in place at the time of its creation. From a land use standpoint, Certificates of Compliance do not create new parcels, they are simply a procedure for recognizing an existing, legal parcel. Conditional Certificates of Compliance do, however, create new parcels at the time they are awarded and may be conditioned to bring these parcels into conformity with current land use regulations regarding subdivisions ( if the illegal subdivider is still the owner ) or the rules that were in effect when the current owner ( the successor to the illegal subdivider ) purchased the property ( Subdivision Map Act Section 66499.35 (b) ). The newly created parcels constitute development under the Coastal Act ( Public Resources Code Section 30106 ) and must also therefore be found consistent with the policies and implementing ordinances of the LCP by obtaining a Coastal Development Permit.

**San Luis Obispo LCP:** The certified LCP provides a procedure for considering Conditional Certificates of Compliance that includes notice, hearing and appeal provisions. Action on Conditional Certificates of Compliance for property located in the coastal zone appeal areas is appealable to the Coastal Commission (Title 21, Section 21.02.020 ). (Please see Exhibit 8) Section 21.01.010 (d) of Title 21 provides that action on a Conditional Certificate of Compliance constitutes action on the Coastal Development Permit as well. In order to approve a Coastal Development Permit, the decision making body must find that the project is consistent with the applicable policies and implementing ordinances of the LCP. The Board action to erroneously grant unconditional Certificates of Compliance circumvented this process to mitigate the impacts on coastal resources that occur by legitimizing illegal parcels and impermissibly restrains the rights of the public and the Commission to appeal the decision.

### Analysis of the Schoenfield Proposal

The following analysis of the Applicant's proposal to obtain unconditional Certificates of Compliance demonstrates that the parcels he sought to have recognized were in fact illegally created in 1949 and were not entitled to unconditional Certificates.

**History of the Property** The Applicant's representative submitted a lengthy, detailed chain of title for this property tracing the conveyances from the original land grants in the late 1800's to the present time. Staff has reviewed all of this material and checked and mapped each conveyance. For each conveyance, staff consulted the County's "Subdivision Regulation Matrix" and other information to determine if the conveyance was consistent with the land division regulations in effect at the time. Up until the 1949 conveyance from Martin to Wilcox, which created six parcels, the conveyances were consistent with the rules for creating and conveying



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parcels. The critical conveyances that occurred in 1949 are discussed in the following sections of this determination.

**Vermazen to Martin** In February of 1949, Vermazen deeded two parcels of land to Martin. Parcel One was approximately 8 acres in size and Parcel Two was a little over 4 acres ( See Exhibit 9). Parcel 1 was located entirely with the south west quarter of the northwest quarter of Section 24, T 30 S, R 10 E. Parcel Two was contiguous to Parcel One but located entirely within the South east quarter of the north east quarter of Section 23, T 30 S, R. 10 E. At that time, the Subdivision Map Act of 1943 as amended in 1949 provided the regulations for subdivisions. Land divisions not defined as subdivisions did not fall under these rules and could, in 1949, be accomplished by deed with a specific property description. Business And Professional Code Section 11535 ( 1943 Act ) defined a subdivision as the division of a unit of land or contiguous units of land into five or more parcels within a one year period. The deed from Vermazen to Martin is specific and clearly describes each parcel according to Township, Range and Section coordinates. Staff followed the descriptions and they are accurate to the properties in question. Thus, in February of 1949, there were two, legal parcels west of Pecho Road owned by Martin.

**Martin to Wilcoxn** In March of 1949, Martin deeded out a portion of the property described above to Wilcoxn. The property deeded to Wilcoxn totaled 6.6 acres and was made up of a 4+ acre portion of Martin's original Parcel One and a 2+ acre portion of Martin's Parcel Two ( See Exhibit 10 ). The property was not described as separate parcels but was identified by Township, Range and Section coordinates.

The effect of conveyance of the property to Wilcox resulted in the division of Martin's Parcel One into three lots and Martin's Parcel Two into three lots for a total of six lots out of the original two, contiguous parcels. Martin retained two lots north of Wilcoxn and two lots south of the deeded out land. The north lots were sold to Andersen in 1955 and the south lots were ultimately sold and resubdivided. In their Staff Report, the County Staff correctly asserted that this conveyance to Wilcoxn was illegal because a Tract Map was required in 1949 for the creation of five or more lots within a year by the same person. The law in effect at the time was the Map Act of 1943 as amended up to 1949. The relevant regulation is found in the 1949 Act in the Business and Professions Code Section 11535 (a) as follows:

*Section 11535 (a) " Subdivision" refers to any land or portion thereof, shown on the last preceding tax roll as a unit or as contiguous units ( emphasis added ), which is divided for the purposes of sale, whether immediate or future, by any subdivider into five or more parcels within any one year period.*



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The Map Act thus provides that if a person has a parcel or two or more contiguous parcels and divides the parcel, or group of parcels into five or more lots within any one year period, that division constitutes a subdivision and comes under the authority of the Map Act.. Section 11538 provides that “ *It is unlawful for any person to offer to sell, to contract to sell or to sell any subdivision or any part thereof until a final map.....in full compliance with the provisions of this chapter and any local ordinance has been duly recorded.*” Therefore in order to legally create five or more parcels in 1949, the subdivider would have had to comply with the procedure for processing a final map as laid out in the Map Act. In this case, no Final Map was ever applied for or filed.

In 1949, Martin owned two contiguous parcels, Parcel One and Parcel Two. As detailed in the previous paragraph, the Map Act of 1943 required that, if the division of these two contiguous parcels, for immediate or future sale, resulted in five or more parcels, then a Final Map was required. It can be presumed that Martin created the parcels for sale because within the next few years, he in fact sold the parcels. He sold two to Wilcoxn shortly after he acquired the original two parcels from Vermazen, sold two more to Andersen six years later and the last two sometime after that. Note also, that the language of the 1943 Map Act does not count only the *additional* parcels created by the division, it simply provides that if, after the division is done, there are more than five parcels, then the provisions for Tract Maps must be complied with.

The question then becomes how many parcels were created when Martin, through his sale to Wilcoxn I 1949, described the new property lines that separated Wilcoxn’s property from Martin’s lots to the north and south. If we accept the Applicant’s contention that this sale transferred *two* lots to his predecessor Wilcoxn, then the same rationale must apply to the creation of *two* lots on the north and *two* lots on the south. The fact that Martin didn’t sell these other lots immediately has no effect on the fact that they were created by the property lines defining Wilcoxn’s parcels. The County Findings in support of the Boards action argue that somehow the situation whereby Martin conveyed out two of the lots by deed to Wilcoxn did not have the immediate result of creating six lots because Martin didn’t **sell** the other four lots within a year. This assertion is inconsistent with the plain language of the 1949 Map Act. The Map Act effective at the time simply says if five or more lots, “ *divided for the purpose of sale, whether immediate or future* “ are **created** within a year, **then the Map Act applies**. A review of Exhibit 11 clearly shows that six lots were created at the moment Wilcoxn’s north and south property boundaries were defined. In conclusion, Martin created six lots in March of 1949 and did not comply with the regulations for land divisions of more than five lots in a single year as required by the 1943 Map Act. The lots were created illegally are, therefore not entitled to Certificates of Compliance under Section 66499.35 (a ) of the current Subdivision Map Act.

The 1943 Map Act does include the following exemptions from it requirements in Section 11535 (b) (1) and (2 ) :



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*Business and Professions Code Section 11535 (b) “ Subdivision “ does not include either of the following;*

*( 1 )Any parcel or parcels of land in which all ( emphasis added ) of the following conditions are present: (I) which contain less than five acres (ii) which abut upon dedicated streets or highways, (iii) in which street opening or widening is not required by the governing body in dividing the land into lots or parcels, and (iv) the lot design meets the approval of the governing body.*

*( 2) Any parcel or parcels of land divided into lots or parcels each of a net area of one acre or more, a tentative map of which has been submitted to the governing body and has been approved by it as to street alignment and widths, drainage provisions and lot design.*

The lots created by Martin in March of 1949 do not meet these criteria for exemption found in Section 11535 (b) (1) because they do not all abut on a dedicated street, a street opening would be required to serve at least one of the lots, and there is no evidence that the lot design was approved by the governing authority ( San Luis County Board of Supervisors ).

The lots created by Martin also do not meet any of the criteria for exemption found in Section 11535 (b) (2) because only four of the parcels created are greater than one acre in size with two of the lots being less than one acre each. There is also no evidence that Martin submitted a tentative map to the governing body and that the map was approved.

In conclusion, Martin divided two contiguous parcel into six lots in 1949 and did not comply with the subdivision requirements in place at that time nor were the lots exempt from the provisions of the Map Act. All of the resulting lots were therefore created illegally.

**Wilcoxn to Thorbergsson** In January of 1959, Wilcoxn conveyed a 2.2 acre portion of his 6.6 acre site to Thorbergsson. Overlooking the fact that the Wilcoxn parcel was created illegally, this conveyance was otherwise consistent with the land division rules at the time and resulted in the present configuration of the property.

**Willfong Certificate of Compliance** In 1976, a subsequent owner, Willfong obtained a single Certificate of Compliance for this site as presently configured. The legal description of the property included both of the lots, but did not describe them as different parcels. The parcel



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was identified by one APN. This Certificate predated Coastal Commission jurisdiction in this area.

## Conclusion

The Applicant's lots were illegally created in 1949 and should not have been processed as unconditional Certificates of Compliance. The Commission therefore determines that the County's action effectively granted two Conditional Certificates of Compliance to Mr. Schoenfield. Because the affected property is located within a "Special Resource Area" and between the first public road and the sea, the County's action is appealable to the Coastal Commission pursuant to Coastal Act Section 30603 (a) (1) (3) (4) and the provisions of Title 21, Section 23.01.043 (c) (1) (3) and (4). The County is requested to forward a Notice of Final Local Action to the Santa Cruz District office that states that this item -- an effective grant of two Conditional Certificates of Compliance -- is appealable to the Coastal Commission. Until the corrected notice is received and the appeal period has run without an appeal being filed the County action to approve this project is suspended pursuant to CCR Title 14 Section 13572 .



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